

# EXHIBIT F

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Rita Dave,	.	Docket #CV-15-3864 (JMA) (GRB)
	.	
Plaintiff,	.	
	.	United States Courthouse
V.	.	Central Islip, New York
	.	November 17, 2016
The County of Suffolk,	.	2:44 p.m.
et al.,	.	
	.	
Defendants.	.	
.....	.	

TRANSCRIPT OF TELEPHONE CONFERENCE  
BEFORE THE HONORABLE GARY R. BROWN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For The Plaintiff:	Chaya M. Gourarie, Esq. Law Office of Jon. L. Norinsberg 225 Broadway-Ste. 2700 New York, NY 10007
--------------------	---

For The Defendants:	Kyle O. Wood, Esq. Suffolk County Department of Law 100 Veterans Memorial Hwy. P.O. Box 6100 Hauppauge, NY 11788
---------------------	--

Audio Operator:

Transcribing Firm:	Writer's Cramp, Inc. 63 Dakota Drive Hamilton, NJ 08619 609-588-8043
--------------------	---

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

1 want the Grand Jury minutes. So yes, we're shooting in the  
2 dark to a certain degree as well.

3 THE COURT: Right, so you haven't seen it either.  
4 Okay, so that's great. I may have seen it in the sense that  
5 it's been sent to me. I will tell you -- and in all fairness,  
6 although I'm familiar a bit with it, I don't remember the  
7 details. But, you know, assume for the -- and so -- because I  
8 don't remember and neither of you have seen it, we can sort of  
9 posit hypotheticals. You know, assume for the purposes of the  
10 question, that the Grand Jury proceeding was conducted in a  
11 way that was woefully inadequate. Doesn't counsel have the  
12 right to explore that then, if you're going to argue that  
13 there was a presumption that it was sort of normal and  
14 reasonable and a finding of probable cause, when there could  
15 have been things that were woefully inadequate in the presence  
16 of the investigator that we're talking about?

17 MR. WOOD: Well, Judge, I would say, looking at the  
18 cases that I've been able to read and actually sort of digest  
19 to a certain degree, it actually isn't the inadequacy, it more  
20 goes to if there is sort of bad conduct done by the  
21 investigators or the prosecutors. In other words, that there  
22 is perjury or misleading statements or false statements  
23 provided, or, you know, certain Brady violation type things  
24 done. That seems to be what actually the Courts have held --  
25 has held would undermine the presumption, not that a certain

1 element was missing. Now the same thing as a sliding scale, I  
2 think there is a case out there that said, as the Court I  
3 think correctly has pointed out, that there was sort of no  
4 evidence that the person should have been indicted, and in  
5 that instance I think they said that presumption should not  
6 apply. But I know a number of cases where some of the  
7 elements were met but something wasn't that they determined  
8 that the presumption still applied with respect to being able  
9 to defend on a 1983 for malicious prosecution.

10 THE COURT: Right, but again, Mr. Wood, I'm not --  
11 and I know you're very focused on the kind of -- the end game,  
12 right? My question is, and Plaintiff's counsel is going to  
13 ask me to release the Grand Jury minutes, particularly given  
14 the sort of flux of the case law and everything you're talking  
15 about. Don't I have to, so she can make sure that there's no  
16 perjury, there's no Brady violation? I mean, In other words,  
17 I may not even be in a position --

18 MR. WOOD: No, Judge. I mean, I think you could  
19 review the minutes and make the determination yourself as to  
20 their --

21 THE COURT: Well, I'll say this: having been a  
22 prosecutor for some time, you know, Brady violations are  
23 fairly fact specific things, right. So I may not have all the  
24 data I need to know whether or not -- you know, what do you  
25 know about that witness? Oh, nothing; he's fine. And, you

1 certainly think there may be a middle ground in the sense that  
2 the County could agree, because we can't argue that Judge  
3 Efman didn't decide this on December 9th, right, he decided  
4 this. What does it mean to say that? I don't know. I do  
5 think -- look, if we think about it this way, Mr. Wood, it  
6 will be impossible for you to argue that everything was great  
7 in front of the Grand Jury if you never see the material  
8 either, right. I don't think you'll have that factual  
9 argument available to you because you don't know what it is.  
10 All you'll be able to say is the investigator will say, well,  
11 we -- you know, whatever happened happened in front of the  
12 Grand Jury, we got the Indictment and we acted on it. Does  
13 that work, or doesn't that work? I don't know. What I can  
14 say is if you want to not kind of prejudge the issue, we could  
15 agree that we could resolve the Grand Jury issue by saying  
16 attached is a copy of Judge Efman's decision which both  
17 parties agree was issued by the Court on December 9th. Agree  
18 to the admissibility of it or something, right. You could  
19 decide to use that to foreclose further inquiry here. If you  
20 can't reach an agreement, then I'll just decide the motion  
21 using the legal standards for deciding when Grand Jury  
22 materials are released. I will say this: the first step  
23 there, in my view, out of a sense of comity -- not comedy, ha  
24 ha, but comity, respect for the State Court -- is to yield to  
25 the State Court. Well, that option isn't available to me